Dear Sir/Madam,

This letter presents my response to the revised proposed Final Judgement
to resolve the United States' civil antitrust case against Microsoft,
which is currently up for public review. I am a citizen of the united
states, and a resident of Ithaca, NY.

I. Critique of Proposed Final Judgement

The proposed Final Judgement that the US and Microsoft agreed to on
November 6th appears to have the best intentions, and addresses many of
the major issues raised by the case. Unfortunately, I feel that it falls
short of being an effective remedy.

I agree with many of the points in the following critique of the proposed
final judgement, and it is more complete than my own statement will be.
Please review the statement on the antitrustinstitute.org website at:

http://www.antitrustinstitute.org/recent/149.cfm

There is much to consider in that document, the points in the proposed
final remedy that I consider most important to review are that:

1) it makes no attempt to address "ill-gotten gains" garnered by
microsoft through its anticompetitive practices. This is a serious
shortcoming because the company's illegal tactics have placed it in a
very advantageous position in the industry. In order to make anticompetitive
behavior unprofitable, there must be substantive punishment that reduces
those gains.

2) the anti-retaliatory clause is insufficient. Section 3.A.1 specifies
that Microsoft shall not retaliate against and OEM for "developing,
distributing, promoting, using, selling, or licensing any software that
competes with Microsoft Platform Software or any product or service that
distributes or promotes any Non-Microsoft Middleware;".

Section 6.L defines Microsoft Platform Software as "(i) a Windows
Operating System Product and/or (ii) a Microsoft Middleware Product."

As I read this clause, it still allows retaliation against OEM's for
developing, distributing, promoting, using, selling, or licensing,
software that competes with other Non-Platform Microsoft Products, such
as Office, .Net, and other applications. This opens an important window
for Microsoft to continue its anticompetitive practices.

3) the api disclosure provision in section 3.D is impossible to enforce.
The only way to ensure that microsoft isn't hiding undocumented API's is
to audit the source code. No body with sufficient manpower has been
appointed to do this. A more appropriate solution would be to require
disclosure to API's AND source to ISVs, IHVs, IAPs, ICPs, and OEMs. They
could then audit suspect code themselves, and present an informed
complaint to the Technical Committee, which could verify and investigate.

4) The only punitive measure specified to discourage Microsoft from
non-compliance is a 2 year extension of the terms of the judgement. If
Microsoft is not complying with the judgement anyway, this is an
extraordinarily ineffective punishment.

II. Support for Plaintiff Litigating States' Remedial Proposals
     (December 7, 2001)

The proposal filed by the state on December 7th, 2001 is a much more
complete remedy. The proposal is available on the web at:

http://www.naag.org/features/microsoft/ms-remedy_filing.pdf

1) It addresses the Microsoft's ill-gotten gains in section H by Open
Sourcing the code to Internet Explorer. The Court's Findings of Fact,
issued on 11/5/99, state that Microsoft successfully used its monopoly
power to increase the market share of Internet Explorer. These findings
of fact can be found on the US Department of Justice webpage at:

http://www.usdoj.gov/atr/cases/f3800/msjudgex.htm#vh

By Open Sourcing the code to Internet Explorer, Microsoft is deprived of
the gains associated with their anti-competitive behavior. Additionally,
consumers and the entire computing industry benefit by augmenting the
publically available software infrastructure of the internet.

2) Section E offers a stronger anti-retaliatory clause which covers all
microsoft products, and not just Platform Products.

3) Section C offers an API Disclosure provision that is enforceable. ISV's,
OEM's, etc are provided access to source as well as API documentation.
This will allow them to inspect suspicious code and present well informed
complaints to the Technical Committee.

4) Section O offers excellent punitive measures in the event that
Microsoft does not comply with the Judgement.

Additionally, section L of this document provides excellent protection
against Microsoft co-opting and breaking standards compatibility, as the

findings of fact show it did with the JAVA standard. This topic is not addressed in the Proposed Final Judgement.

III. General suggestions

Unbundling microsoft middleware/products/services is a superior solution than requiring alternatives be bundled as well. The latter has the effect of favoring a small number of well established middleware/products/services by creating large barriers of entry to new middleware/products/services that are not included in the OS distribution.

Mandating that Microsoft offer licenses to third-party companies to port its applications to alternative Operating Systems is a superior solution than requiring that Microsoft maintain ports of particular products to particular OS's. Determining whether a port of a given application to a given platform can be profitable is difficult and should be decided by the market. Microsoft should not be allowed to lock-out existing markets by not porting applications and not allowing others to do so. However, is it not feasible to expect Microsoft to port every application to every platform. There is not always a demand.

There should be a reward in the event that microsoft makes every effort in good faith to comply with the judgement. Perhaps make the judgement applicable for 10 years, with an option to terminate the measures in 5 if microsoft makes efforts in good faith to comply.

IV. Relevant Links

1) The Proposed Final Judgement (11/6/2001)
http://www.usdoj.gov/atr/cases/f9400/9495.htm

2) The commentary on the Proposed Final Judgement at antitrustinstitute.org
http://www.antitrustinstitute.org/recent/149.cfm

3) Plaintiff Litigating States' Remedial Proposals (12/7/2001)
http://www.naag.org/features/microsoft/ms-remedy_filing.pdf

V. Closing

Thank you for your time and consideration. I hope an appropriate set of remedial measures can be decided upon soon.

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